

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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HIMELDA MENDEZ *and on behalf all other persons*
similarly situated,

Plaintiff,

-v-

ANN INC. *d/b/a* LOFT,Defendant.
-----X

19-cv-10623 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

The Court stayed this case pending a decision by the Second Circuit on appeals before it concerning the same issues and arguments raised in this case. Dkt. No. 30. At the time, Defendant had filed a motion to dismiss the complaint for failure to state a claim and lack of standing. Dkt. No. 14. No answer had been filed. Thereafter, Defendant filed a Suggestion of Bankruptcy on the docket. Dkt. No. 31.

On June 2, 2022, the Second Circuit issued a decision in the consolidated appeal *Calcano v. Swarovski N. Am. Ltd.*, No. 20-1552, 2022 WL 1788305 (2d Cir. June 2, 2022). In *Calcano*, the Second Circuit held that plaintiffs' "conclusory claims" that they intended to return to Defendants' stores were not sufficient to allege standing. *Id.* at *6. The mandate has now issued. See *Calcano v. Swarovski*, No. 19-cv-10536-GHW, at ECF. No. 30.

It is hereby ORDERED that within 14 days of this Order, Defendant shall file on the docket an update as to the status of the bankruptcy, including whether the case should remain stayed in light of that proceeding. If Defendant informs the Court that a further stay is not appropriate, the Court will order the stay in this case lifted and Plaintiff shall, within 30 days of the Defendant informing the Court that a further stay is not appropriate, submit a letter indicating whether she intends to amend her complaint in light of the Second Circuit's decision in *Calcano* or whether she will stand on her original complaint. If Plaintiff intends to amend her complaint, she shall do so not later than 14 days after she informs the Court of her intention. In the event that Plaintiff amends her complaint, Defendant may either move against the amended complaint or may answer. In the event Plaintiff does not amend her complaint, Defendant must indicate—within 14 days of Plaintiff informing the Court that she does not wish to amend or after her time for doing so has run—whether it wishes to renew the motion to dismiss denied without prejudice at Dkt. No. 30 or answer.

SO ORDERED.

Dated: July 18, 2022
New York, New York



LEWIS J. LIMAN
United States District Judge